

REMARKS

Applicants have carefully reviewed the Office Action dated February 17, 2005. Claims 1-30 are pending in this application. Reconsideration and favorable action is respectfully requested.

Claims 1-5, 10-11, 15-20, 25-26 and 30 stand rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of the *Metz et al.* ("Metz") reference and the *Birdwell et al.* ("Birdwell"). This rejection is respectfully traversed with respect to the claims as amended.

These two references that the Examiner has utilized have been discussed in the past, but Applicants will discuss them in detail with respect to the claims.

The first reference, the *Metz* reference, is directed toward the concept of allowing the software vendor, once the software is distributed to set-type terminal devices, to be able to provide upgrades therefor. To facilitate this, a broadcast channel is defined that repeatedly broadcasts upgrades for the software. The two independent claims, Claims 1 and 16, both require there to be a television broadcast distribution system to transmit analog and digital television information to a receiver of a user. *Metz* discloses the concept of distributing the software via a broadcast channel to a receiver of the user. Further, the claims require designating select ones of the one or more broadcast channels for the transmission of one or more of the discrete software extremes and *Metz* illustrates that one example would be to designate channel "0" as the broadcast channel which can be selected by the set-type terminal in *Metz*. The claims then require that one or more of the discrete software streams be transmitted over the select channel at a scheduled time. The system of *Metz* discloses in Col. 8, lines 62-64 that the computer "repeatedly sequentially outputs the contents of the data file." Further, the claims require that the data streams have a unique ID associated therewith. In *Metz*, there is provided a version number for the software. Thus, the set-top terminal is not necessarily checking for software but, whether the upgrade has already been performed. In any event, even if this were considered to be a unique ID, which is arguable, the purpose of the version number is such that the set-top terminal can determine whether it has already been upgraded and no further upgrade is required. If the upgrade were

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downloaded, which it appears is not the case if the version number is the same as already exists on the set-top terminal, then the system would more than likely not perform a second upgrade of what has already been upgraded, as this would not be a useful system operational process. However, if the set-top terminal determines that a new version number exists and that upgrade is required, then the software will be extracted from the broadcast data stream and the set-top terminal upgraded. However, the claims in the present application require that the unique IDs be unique to a particular user and uniquely associated therewith. *Metz* does not describe such, as any set-top terminal can be upgraded with a version number. Further, there is no encoding or the such contained within the software to prevent anybody from receiving this information from that channel. The claims further require that the user associate the unique ID with the monitoring interface of the user, wherein the unique ID is then both associated with the user, the monitoring interface and the discrete software data stream. The manner in which this is done in Applicants' invention, in one embodiment, is that an authorization code is provided for that user which is loaded on the set-top box and, when the authorization code is downloaded with the software, a comparison can then be made. However, the claims specifically require that this unique ID associated with the user be disposed on the set-top box. This is not disclosed in *Metz*, nor is it suggested. Further, there would be no motivation to provide such, since *Metz* is not concerned with any particular user or a particular set-top terminal. It is merely providing a wide open broadcast of upgrade software that is available for a set-top terminal if that set-top terminal desires to do such. Applicants' present inventive concept, has the motivation to prevent the user from downloading more than one copy of the software, since the user is purchasing that copy. This is to prevent downloading of multiple copies and to protect the distributor of that software.

The claims further require that the software be downloaded after selection. This concept by itself is disclosed in *Metz* in that, after the version number has been compared with the current version number and it is found that that version number is different, the downloading of the upgrade software will be performed. However, the claims further require that the unique ID be deleted from the monitoring interface for each of the one or more discrete software data streams after downloading thereof. *Metz* has no disclosure or suggestion of any downloading or any deleting of the unique ID, since this would require deleting the version number from the set-top terminal. There is no disclosure or suggestion of

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such in *Metz* and, further, there would be no motivation for such due to the fact that *Metz* does not want to prevent downloading any upgrade a second time but, rather, only wants to possibly prevent downloading of a second copy, wasting processing time at the set-top terminal. However, even if the current version were downloaded and not upgraded, this would not be a problem, since *Metz* does not concern itself with whether a duplicate copy of the upgrade itself has been downloaded. The only thing *Metz* would concern itself with would be a possible interruption of processing time to upgrade a system that was already upgraded. Thus, Applicants believe that *Metz* is clearly deficient on three aspects. The first is that the unique ID is not unique to the user and uniquely associated therewith and the second is that the user has no involvement in associating this unique ID with the monitoring interface. The third is there is no suggestion or motivation in *Metz* for deleting the unique ID from the monitoring interface, i.e., the set-top terminal. In fact, *Metz* teaches against doing such as it would completely destroy the operation of the system.

The Examiner has utilized the *Birdwell* reference to support the missing aspects that *Metz* does not support with respect to the rejection. However, the Examiner only points to two aspects, that of the user associating the unique ID with the user storage device prior to downloading and, after downloading, deleting the user ID. Applicants believe that the *Birdwell* reference is insufficient to support this for a number of reasons, which will be described in detail hereinbelow.

The *Birdwell* reference, as discussed in prior responses, provides a method for downloading data from a server to a client. This is not necessarily a software data stream but, rather, it is a simple datastream. Initially, data is deposited on a server for downloading to specific clients. Thus, at one point in time, there is provided data that can be designated for multiple clients. The system of *Birdwell* has two methods to download the data. The first is to use a point-to-point connection wherein the client has a defined address on the network, of which the server is aware and the server can connect directly to the client and download the data thereto. Thus, a client would have a unique location on the network, and it would be locatable. There is a second method of delivery, that being the "broadcast mode." In this mode, the server may determine that there are a plurality of clients that need to receive the data. If this is so, the server can choose the broadcast mode and broadcast to a specific address that the clients

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have access to. Typically, this information will be transmitted to the particular clients such that they will then be set up to receive on that address. The disclosed method of doing this is to provide all clients in the system with an address on the global network such that information can be sent thereto as to what address to then change to in order to receive downloaded data. Thereafter, the data is broadcast to that address and each of the clients will receive it. This is very similar to a multitask operation. However, the system of *Birdwell* is divided into two application kernels. The first is the one for downloading the data and the second is the one for confirming the download. The purpose of *Birdwell* is to ensure data is sent, since the purpose of *Birdwell* is to allow another entity to deposit data on the server and then the server takes care of delivering that data. All that *Birdwell* is concerned with is to confirm that the data was sent. There is no disclosure or suggestion in *Birdwell* that sending multiple copies of the software is detrimental to the system. In fact, it is encouraged, as will be set forth hereinbelow. Further, it is noted that the confirm operation is disconnected from the download operation. Specifically, with respect to Figure 2, there is an example utilizing the broadcast mode where information is transmitted to multiple clients. It is noted that in order to transmit the stored data to any one client, one of the clients must request a download of the data. Once requested, the system will then broadcast the information to the designated channel, if the broadcast mode is selected, and, opportunistically, the data will then be transmitted to all of the intended recipients of the data. However, there may be a situation where one of the clients is not connected to the system. This is set forth in the flow chart of Figure 2 wherein client A requests the download of its data from a particular list and then the server will then broadcast the data to all the remaining clients. It is noted that one client, client C, is running but is not connected to the server. This operation is described beginning at Col. 7, line 1 to Col. 7, line 5, where it is noted that there is a concept of "delayed confirmation" because the client C was not connected to the server. However, the download portion, i.e., the portion for receiving the data from the broadcast media, is connected. Therefore, these two operations of downloading and confirming downloads are different. Further, in Col. 7, lines 23-24, it is set forth that "if a client had already received that download data, then it would disregard the rebroadcast." This language indicates that the data can be rebroadcast to a particular client. In fact, there is no reason not to rebroadcast the data. The only thing that prevents the rebroadcast is receiving a confirmation that the data has already been broadcast and then the ID of that particular client is deleted from the list *at the server*. The confirmation operation is an operation

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wherein a download ID is sent along with the software to a particular client. The client, since it knows what channel to open, will receive whatever is sent to that particular channel. Along with that data is the identification ID that was placed thereon by the server and the client will "strip" that ID off and send it back to the server. The server, once receiving the confirmation, will then delete the client ID from the list such that data is not again rebroadcast to that particular client. However, although not described in detail, the operation appears to occur where one of the systems is not running. This is described with respect to client D in the flow chart of Figure 2. If this is the case, then client D will request a further download of any data that is provided thereto. It will request the list and, if its name is on a list, indicating that data is to be downloaded to client D, then the server will determine how to send the data. It can either send data in a point-to-point communication or in a broadcast. However, if it does broadcast the data, there still may be other clients that have not confirmed receipt of the data and it may be that, due to the fact that there are a number of additional clients that have not confirmed the data, it will again broadcast to client D the information which will then opportunistically broadcast the information to the other systems. If those other systems have their broadcast data component (BDC) turned on, they will receive the data. However, it is noted that if it is a rebroadcast and if the data has been received, it will ignore it. However, it is noted that *Birdwell* still allows the data to be broadcast more than once and allows a receiving station to have the ability to download that information more than anyone having access to that address to download the software more than once. This is due to the fact that the only way to prevent downloading more than once is for a confirmation to be sent back to the server to delete the client ID. Further, there must be some mechanism to then prevent the set-top terminal to lead to a particular channel, but there is no disclosure set forth as to deleting this channel and preventing a system from receiving further broadcasts. In fact, there is no motivation in *Birdwell* for doing such as there is no detriment to the system if the user receives the software multiple times or is "looking at" the particular channel after it receives the data. All the motivation for the entire system of *Birdwell* is to confirm delivery of the software to a particular client or set of clients. Whether they receive it multiple times is of no concern.

With respect to the claim, Applicants will go through the claim at each step comparing it to *Birdwell*. The first step of the claim is providing a television broadcast distribution system for

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broadcasting the information to it. *Birdwell* does not describe a television broadcast distribution system; rather, it describes a broadcast data channel that broadcasts information to one or more users. The broadcast is utilized so that multiple users can receive this at a single time for more efficient transmission of data. The second step of the claim is that select ones of the broadcast channels are designated for receiving the one or more discrete software data streams. *Birdwell* does designate a channel, i.e., a particular address on the network, for which data is to be broadcast. Again, this is similar to a multicast system. The claims requires that the software then be transmitted over the select channel at a "scheduled time." There is no scheduled time with respect to the *Birdwell* reference. Rather, the software is basically distributed at one time after the channel information is sent to the particular client at the request of a single client. Therefore, one client would request download of information designated for its location based upon its existence in a list. This particular client would not know that the originator of the data desired to have this data sent to other recipients. This is opportunistic in that the data will be sent to the other recipients. If the other recipients were not operating, they would not receive it and only the requesting one would receive it. If, for example, two other clients were "listening," then they would receive the data preventing a future request from those other clients and completion of the distribution of the particular data and the deletion of their names from the delivery list (assuming that the confirmation was sent even though the data was delivered). Thus, *Birdwell* does not have any type of scheduled time and this is not the purpose of *Birdwell*. The *Birdwell* reference merely responds to a request by sending information to a requestor and, opportunistically, to other potential recipients of the data as designated by the originator of the data. The claim further requires that each of the software data streams having a unique ID associated therewith. *Birdwell* provides a download identification for each of the software streams. This download identification is for the purpose of confronting the download. *Birdwell* does not disclose that this ID was associated therewith by the software vendor (*Birdwell* discloses only that the server associates the download ID with the software) and, further, that the unique IDs are unique to a user and uniquely associated therewith. There is no disclosure in *Birdwell* for associating the ID in any way with the user or even with the client. In a point-to-point broadcast, there would be a static address. However, the static address is in no way associated with the software vendor and it is certainly not unique to the software. Therefore, the only thing that could remotely be argued to relate to the unique ID in the claims is the download ID.

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However, again, the download ID in *Birdwell* is not associated therewith by the originator of data and it is not unique to the user. The claim further requires that the user associate this unique ID with the monitoring interface. There is no operation on the user system that would require associating a unique user ID. There is some disclosure about sending an encryption key to the user and there is also some disclosure as to sending a particular address to one of multiple users in a broadcast operation. However, this is unique to the software to allow downloading of the software. This is not unique to the user. Thus, *Birdwell* does not disclose an operation wherein this unique ID associated with that user is then associated with the monitoring interface of the user. The next step in the claim, is that for selecting the one or more discrete software data streams. *Birdwell* does not provide a selecting the one or more discrete software data streams. *Birdwell* does not provide a selection of the software data streams but, rather, merely downloads everything that is sent to it. Once it receives the address, it receives everything on that address. Further, there is no reason to provide selection, as the particular address or broadcast channel already does the selection. The next step is the operation of downloading one or more discrete software data streams to a user's storage device. Data is downloaded and stored. Of course, it is not at the "scheduled time" and this is a deficiency in *Birdwell*. The last step, the step of deleting the unique ID from the monitoring interface, is not present in *Birdwell*, nor is it suggested or even related to the purpose of *Birdwell*. There is no unique ID that is stored at the monitoring interface that would be deleted. The only thing that is deleted is the ID of the client from the "delivery list" at the server. This only occurs when the confirmation of the download has been received by the server. The argument that deleting it at the server and deleting it at the monitoring interface would be the same is not believed to be a valid argument. The reason for this is that the purpose of *Birdwell* is to ensure that the data has been downloaded. In Applicants' present inventive concept, as defined by the amended claims, it is not important to confirm that any data has been downloaded; rather, all that is required is that the system be set up in a reliable manner as such that software vendors, once they provide a code to a user, are confident that the user, the ones paying for this code, can then download the information on the broadcast that is provided on the broadcast channel. The primary concern of any software vendor is that, once an authorization code is provided, that only one copy of the software could be downloaded and not allow multiple copies to be downloaded. *Birdwell* has no concern as to whether multiple copies are downloaded but, rather, wants to ensure that the server just does not waste time transmitting software

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multiple times. Therefore, *Birdwell* is deficient in a number of areas. First, *Birdwell* does not provide a unique ID for each of the software streams that is associated therewith by an associated software vendor and wherein each of the unique IDs is unique to that user and uniquely associated with the downloaded data stream. All that is associated with the software is a download ID for the purpose of confirmation. The purpose of the unique ID in the present claims is to prevent multiple downloads. Further, *Birdwell* does not show any way to delete the unique ID from the monitoring interface such that information is prevented from being downloaded twice. In fact, *Birdwell* clearly allows multiple broadcasts to a particular system when it is running due to the fact that the confirm operation is not necessarily connected to the download operation. Again, this is set forth in Col. 7, lines 24-25. Further, in Col. 5, beginning at line 4, it is set forth as follows:

In a preferred embodiment, a client computer system can receive download data for a client APP even though the client APP is not currently executing and connected to the server APP. The client FTC and client DDC control the receiving of download data. If download data is received when the client APP is not executing, the data is stored until the client APP starts execution and retrieves the data.

Thus, confirmation of the download will not occur until a later time in the event that this is the case.

The motivation to combine the *Birdwell* and *Metz* references is not present. The *Metz* reference is a reference wherein repeated broadcast of upgrade data is sent to "all" desktops for the purpose of upgrading the software thereat. There is no requirement for confirming that the upgrade was present or for selecting a particular desktop or set-top terminal to transmit the information thereto. The *Birdwell* reference is a reference that is directed toward delivering data to specific clients based upon the directions of a particular originator of that data. This facilitates this with a broadcast, but this broadcast is opportunistic. The primary purpose of the transmission is to transmit it to a "requesting" client and, if it just happens that other clients are to receive the data, it will broadcast the data to them at that time. If they do not receive it or do not know they have received it, there may be another request from another client to receive the same data which may have already been transmitted and received by them. Thus, *Metz* is a blind broadcast system that just broadcasts the data on a repeated basis, whereas *Birdwell* only

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broadcasts data in response to a request. Further, the purpose of *Metz* is not to receive confirmation, whereas the purpose of *Birdwell* is to receive confirmation such that data is not transmitted unnecessarily. Therefore, the purpose of both *Metz* and *Birdwell* is different. Further, the originator of *Metz* would not look to *Birdwell* for the purpose of deleting all ID, as there is no reason whatsoever to delete an ID in the operation of *Metz*. The *Birdwell* reference, on the other hand, would never utilize the teachings of *Metz* in that there is no desire to continually transmit data to any system viewing a particular channel; rather, *Birdwell* is very specific in what client it transmits data to, based upon the originator's desires. Thus, Applicants believe that there is no motivation to combine both *Metz* and *Birdwell*.

Both *Metz* and *Birdwell* teach away from Applicants' invention, in that both *Metz* and *Birdwell* teach that it is not desirable to delete the unique ID or to prevent transmission of software or data multiple times to a user's location. *Metz* would never delete the unique ID, that unique ID being the version upgrade number, since this would defeat the purpose of *Metz*. *Birdwell* teaches that it is not desirable to prevent rebroadcast but, merely, prevent re-storing information. In fact, *Birdwell* teaches that rebroadcast is desirable as it is only the confirmation that causes rebroadcast to discontinue. Therefore, any user could receive multiple copies of the data if it just inhibited connection to the server for that particular application.

In view of the above arguments, Applicants believe that the combination of *Birdwell* and *Metz*, either taken individually or in combination, do not anticipate or obviate Applicants' present inventive concept as defined by independent Claims 1 and 16. Therefore, since the remaining claims depend from one of these two claims, Applicants respectfully request the withdrawal of the 35 U.S.C. §103(a) rejection with respect to Claims 1-5, 10-11, 15-20, 25-26 and 30.

Claims 6, 12-14, 21 and 27-29 stand rejected under 35 U.S.C. §103(a) as being unpatentable over *Metz*, *Birdwell* and *Brandenburg*. These claims are dependent from Claims 1 and 16 and, therefore, the addition of the *Brandenburg* reference does not cure the deficiencies noted with the combination of *Metz* and *Birdwell* which were utilized to support the rejection of the independent claims. Therefore,

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Applicants believe that the *Brandenburg* reference does not, in combination with *Metz* and *Birdwell*, obviate the claims from which they depend and, therefore, Applicants respectfully request the withdrawal of the 35 U.S.C. §103(a) rejection with respect to Claims 6, 12-14, 21 and 27-29.

Claims 7-8 and 22-23 stand rejected under 35 U.S.C. §103(a) as being unpatentable over *Metz*, *Birdwell* and further in view of *Durden*. These claims depend from independent Claims 1 and 16 and Applicants believe that the addition of the *Durden* reference does not obviate those rejections or cure deficiencies that exist with respect to the combination of *Metz* and *Birdwell*. Therefore, Applicants respectfully request the withdrawal of the 35 U.S.C. §103(a) rejection with respect to Claims 7-8 and 22-23.

Claims 9 and 24 stand rejected under 35 U.S.C. §103(a) as being unpatentable over *Metz*, *Birdwell* and *Durden* and further in view of *Fries*. The addition of the *Fries* reference does not cure the deficiencies noted hereinabove with respect to the combination of *Metz* and *Birdwell* that utilized to support the rejection of Claims 1 and 16, from which Claims 9 and 24 depend. Therefore, Applicants respectfully request the withdrawal of the 35 U.S.C. §103(a) rejection with respect to Claims 9 and 24.

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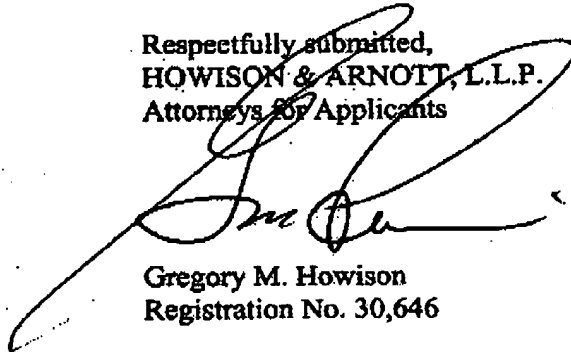
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Applicants have now made an earnest attempt in order to place this case in condition for allowance. For the reasons stated above, Applicants respectfully request full allowance of the claims as amended. Please charge any additional fees or deficiencies in fees or credit any overpayment to Deposit Account No. 20-0780/PHLY-24,767 of HOWISON & ARNOTT, L.L.P.

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